IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3567 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order mad
JJJJ

#. The detention order dated 26-4-1999 passed by respondent No.2 - The Commissioner of Police, Ahmedabad against the petitioner in exercise of powers conferred under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-B interalia indicates that in all four criminal cases were registered against the petitioner on 8-3-98, 11-3-98, 2-12-98 and 25-4-99. That in each case, the country made liquor was seized from the possession of the petitioner / detenu. That first two cases are pending for trial while, the remaining two cases are pending for investigation. Over and above, that two witnesses on assurance of their anonymity, have given information against the petitioner regarding his bootlegging activities. That they have given their statement on 26-4-199, wherein, the said witnesses have referred to incidents dated 5-4-99 and 20-4-99 respectively.

On the basis of the aforesaid material, the respondent No.2 as detaining authority has come to the conclusion that the petitioner is bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, detention order is necessary and hence the impugned order is passed.

#. It has been contended on behalf of the petitioner at bar that the impugned order is bad in law on account of the non application of mind. It is submitted that before passing the order, the detaining authority has failed to consider the availability of less drastic remedy like claiming of cancellation of bail. That on the date of passing of order, the petitioner was in police custody and as such, the subjective satisfaction reached by the detaining authority having been vitiated and has rendered the impugned order invalid.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention

order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. On scrutiny of papers, in the last but one para of grounds for detention, the detaining authority has observed that the petitioner is in police custody. However, he is likely to be produced before the Court and having got himself released on bail, is likely to continue his anti social activities and thereby in the interest of public order, the detention order is necessary. The said observation of the detaining authority disclosed that while passing the impugned order, the detaining authority has failed to consider the availability of less drastic remedy like claiming of cancellation of bail as available under Section 437(5) of CrPC.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 26-4-99 passed by respondent No. 2 - The Commissioner of Police against the petitioner is hereby quashed and set aside. The petitioner - Shri Arif Chhotukhan Pathan is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 19-1-2000 [A.K.Trivedi, J.]

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